Nos. 81-520, 81-522

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

NATIONAL ASSOCIATION OF BROADCASTERS, *et al.*,
Petitioners,

v.

FEDERAL COMMUNICATIONS COMMISSION,
UNITED STATES OF AMERICA, *et al.*,
Respondents.

NATIONAL FOOTBALL LEAGUE,
Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF IN OPPOSITION OF RESPONDENT NATIONAL CABLE TELEVISION ASSOCIATION, INC.

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On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF IN OPPOSITION OF RESPONDENT NATIONAL CABLE TELEVISION ASSOCIATION, INC.

STATEMENT OF THE CASE

The National Cable Television Association, Inc. ("NCTA") represents the interests of more than 1,700 cable television systems, serving approximately 65 percent of cable television subscribers nationwide. NCTA participated in the proceedings below before both the Federal Communications Commission and the Court of Appeals. Before the court, NCTA intervened on the side of the respondent FCC.

The Petitioners urge this Court to require that the FCC retain certain restrictions on the carriage of television signals by cable television systems. The FCC has found the restrictions no longer justified, and the United States Court of Appeals for the Second Circuit has affirmed. In an effort to create an issue of interest to this Court, the Petitioners strain to show some inconsistency between the FCC's action and congressional policy behind the Copyright Act of 1976[1] and the limited antitrust exemption granted to professional sports teams by Pub. L. No. 87-331.[2] In fact, however, there is no such inconsistency.

The Petitioners seek to preserve distant signal and syndicated exclusivity restrictions first imposed on cable television systems by the Commission in 1972.[3] When the Commission adopted these rules, it considered them interim measures. They were designed for two purposes: to protect the status quo for television broadcast stations until the actual effect of cable television on their operations could be calculated, and to facilitate the passage of

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[1] Pub. L. No. 94-553, 90 Stat. 2541 (codified at 17 U.S.C. §101 *et seq.* (1976 & Supp. III 1979)).

[2] Pub. L. No. 87-331, 75 Stat. 732 (codified at 15 U.S.C. §§1291-95 (1976)).

[3] 47 C.F.R. §§ 76.59(b)-(e), 76.61(b)-(f), 76.63, 76.151-76.161 (1979). The distant signal rules limited the number of signals from distant television markets that a cable system may transmit to its subscribers. The syndicated exclusivity rules permitted local television stations with exclusive program exhibition rights to demand that a cable system delete those programs from distant signals. See the decision below, Malrite T.V. of New York v. FCC, 652 F.2d 1140 (2d Cir. 1981), *reprinted in* National Association of Broadcasters' ("NAB") Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit, App. C (September 14, 1981) [hereinafter cited as the "NAB Pet."]; *see also* Report & Order in Dockets 20988 and 21284, 79 F.C.C.2d 663, 668-69 (1980) [hereinafter cited as the *1980 Report & Order*].

copyright legislation to define the respective rights of program producers, television stations, and cable television systems.[4] The Commission noted, both at that time and later, its desire to "maintain the necessary flexibility to adjust the rules as developments warranted and experience dictated."[5]

By 1980 events had washed away both of the original underpinnings of the rules. First, in 1976 Congress had adopted copyright legislation defining the rights of program producers and television stations in programs carried on cable systems in distant markets. Recognizing the difficulty of private "market-place" bargaining among these interests, Congress had established a "compulsory license." Cable systems automatically were awarded a compulsory license for the carriage of distant signals permitted under FCC regulations, and a system of royalty payments to program producers had been established. Second, with the encouragement of the Court of Appeals for the District of Columbia Circuit,[6] the Commission had compiled extensive data showing that neither the

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[4] In 1968 this Court held that cable retransmission of broadcast signals was not a "performance" under the Copyright Act of 1909. Fortnightly Corp. v. United Artists Television, Inc., 392 U.S. 390, 400-401 (1968). In 1976 this Court confirmed that the *Fortnightly* holding applied to the importation of distant signals. Teleprompter Corp. v. Columbia Broadcasting System, Inc., 415 U.S. 394, 409 (1974).

[5] Report in Docket No. 21284, 71 F.C.C.2d 632, 654 (1979) [hereinafter cited as the *Economic Inquiry Report*]; *see also* Cable Television Report and Order, 36 F.C.C.2d 143, 210, *recon.*, 36 F.C.C.2d 326 (1972).

[6] In Geller v. FCC, 610 F.2d 973, 979 (D.C. Cir. 1979), the District of Columbia Circuit had ordered the FCC to consider whether its restrictions on cable television signal carriage were still warranted following the passage of the Copyright Act of 1976.

distant signal restrictions nor the syndicated exclusivity rules were justified.[7]

SUMMARY OF ARGUMENT

In their effort to argue that the Commission's relaxation of cable television signal restrictions conflicts with congressional policies, the Petitioners have stretched those policies beyond recognition.

- The Commission's interpretation of the Copyright Act of 1976 did not repeal by implication its jurisdiction under the Communications Act, as argued by the NAB. The jurisdiction that the NAB argues has been repealed improperly by implication was itself only implied under the Communications Act. The Copyright Act has given the Commission clear congressional guidance in the area for the first time.

- The Copyright Act did not freeze the FCC's cable rules, again as argued by the NAB. The wording of the Act itself, as well as the legislative history, shows a plain congressional intention to leave to the FCC the basic decision of what restrictions, if any, should be retained on cable television signal carriage. On the other hand, the express purpose of the Act does not permit the FCC to adopt a system of requiring cable systems to obtain consent from program producers. The concept of "program transmission consent" is directly in conflict with the compulsory license scheme of the Copyright Act.

- The antitrust exemption granted to professional sports teams by Congress does not reflect any congressional judgment about the cable television carriage of games played in distant markets. And even if a congressional policy to protect local games could

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[7] *See generally 1980 Report & Order, supra* note 3; *Economic Inquiry Report, supra* note 5; Report in Docket No. 20988, 71 F.C.C.2d 951 (1979) [hereinafter cited as the *Syndicated Exclusivity Report*].

be discerned, the Commission looked for and found no evidence that importation of distant games by cable systems would injure the professional sports interests.

ARGUMENT

I. There Is No Issue in This Case Concerning Any Repeal by Implication of Statutory Jurisdiction of the Federal Communications Commission.

The NAB crafts an argument without foundation. According to the NAB, the Commission and the court below have interpreted the Copyright Act of 1976 to repeal by implication jurisdiction provided in the Communications Act. The NAB argues that that jurisdiction permits the Commission to require cable television systems to obtain "retransmission consent" before carrying distant television signals. The Commission's and the court's determination that a retransmission consent requirement would be antithetical to the Copyright Act, the NAB argues, amounts to a repeal by implication and must be reflected in a "clearly expressed congressional intention."[8] Yet the NAB's argument is missing crucial linkage: the Commission's jurisdiction over cable television is itself only implied in the Communications Act.

As this Court has emphasized, the Commission's authority over cable television under the Communications Act is "restricted to that reasonably ancillary to the effective performance of [its] various responsibilities for the regulation of television broadcasting."[9] The Communications Act does not address the appropriate regula-

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[8] NAB Pet., *supra* note 3, at 12, *quoting* FAA v. Robertson, 422 U.S. 255, 266 (1975).

[9] United States v. Southwestern Cable Co., 392 U.S. 157, 178 (1968); *see also* FCC v. Midwest Video Corp., 440 U.S. 689 (1979).

tory framework for cable television. Thus, the Copyright Act, as interpreted by the Commission, does not override any statutory jurisdiction. The Act fills a statutory void, where previously congressional policy could be discerned only by extension. The cases cited by the NAB setting forth the standards for implied repeals are wholly inapposite.[10]

II. The Court Correctly Held That the Copyright Act Did Not Freeze the Distant Signal and Syndicated Exclusivity Rules.

When Congress passed the Copyright Act of 1976, it was aware of the Commission's distant signal and syndicated exclusivity restrictions on cable systems. Congress anticipated that the Commission might at some future time determine, in the exercise of its implied powers, that the rules should be changed or eliminated. Were the Commission to make such future revisions in its rules, Congress explicitly gave the Copyright Royalty Tribunal authority to adjust the royalty payments made by cable systems to reflect those changes: "In the event that the rules and regulations of the [FCC] are amended at any time after April 15, 1976, to permit the carriage by cable systems of additional television broadcast signals beyond the local service area of the primary transmitters of such signals," the Act provides, "the royalty rates established by section 111(d)(2)(B) may be adjusted * * *."[11] This is hardly language reflecting an intention to prevent the Commission from changing its signal carriage restrictions.

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[10] We know of no case holding that the strict rule of statutory construction against implied repeals of express statutory provisions applies where there is no express provision to be "repealed."

[11] 17 U.S.C. § 801(b)(2)(B) (1976 & Supp. III 1979).

Although Congress cautioned the Commission not to rely on the passage of the copyright legislation as a mandate for regulatory reform of the cable television rules,[12] it made clear that the FCC was not prohibited from altering its rules. The House Report noted that the Act would extend the compulsory license to the carriage of programming later authorized by an amendment to the FCC's rules: "If these rules are change[d] in the future to allow additional cable carriage of television programs it is the Committee's judgment that the royalty rates paid by cable systems should be adjusted to reflect such changes."[13]

The Commission's conclusion that its cable television rules should be revised, moreover, was not based entirely on the passage of the Copyright Act. The decision was reached only after extensive, careful study and the benefit of advice reflecting a broad range of interests. The Commission's investigation into whether the rules should be eliminated lasted for four years. With Appendices, the *Economic Inquiry Report* stretched to 318 pages in the Federal Communications Reports. Thirty-one sets of comments were submitted to the Commission by interested parties. These studies and comments contributed to the Commission's increased understanding of cable television and its effect on broadcast television. For example, the Commission was able to draw on five econometric studies prepared by independent authorities on the present and future demand for cable television.[14] And the actual impact of cable television on local station audiences was reflected in studies of six "grandfathered"

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[12] H.R. Rep. No. 1476, 94th Cong., 2d Sess. 89 (1975).

[13] *Id.* at 176.

[14] *Economic Inquiry Report, supra* note 5, 71 F.C.C.2d at 668 n.82.

markets, where cable had been allowed to develop unimpeded by the 1972 rules.[15] The Commission justifiably claimed that new insights now enabled it to proceed with an absence of doubt "uncommon in matters of public policy."[16]

Nor was the Commission required to adopt retransmission consent in place of the discarded rules. The NAB complains of an inability to obtain the benefit of bargained-for exclusivity.[17] Yet the Copyright Act is itself based on Congress' recognition that bargaining by cable television systems in this arena is impractical. Such "item by item negotiating between users and owners of copyright prior to each performance would be so burdensome as to destroy this valuable means of communication and would also effectively deny a valuable market to copyright owners."[18]

Congress intended the compulsory license created by the Copyright Act to be a surrogate for actual bargaining. In contrast, retransmission consent would require cable systems to enter into the very negotiations that the Copyright Act was enacted to avoid. The court below was certainly correct when it explained in detail that retransmission consent is antithetical to the statutory license of the Copyright Act.[19]

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[15] *Id.* at 688-711.

[16] *Id.* at 715.

[17] *See, e.g.*, NAB Pet., *supra* note 3, at 4-5.

[18] H.R. Rep. No. 1476, *supra* note 12, at 362 (additional concurring views of Rep. Danielson). *See also* Ross & Chazen, Federal Regulation of Cable Television: The Visible Hand, 83 Harv. L. Rev. 1820, 1826 (1970).

[19] Malrite T.V. of New York v. FCC, *supra* note 3, 652 F.2d at 1148, NAB Pet., *supra* note 3, at 23c-25c. Retransmission consent is

III. The Limited Antitrust Exemption Granted to Professional Sports Teams Does Not Require the FCC to Regulate Cable Television Carriage of Sports Programming.

The National Football League ("NFL") advances the novel theory that the FCC is obliged to translate the limited antitrust immunity conferred by Pub. L. No. 87-331, *supra* note 2, into a mandate for limitations on the importation of distant television signals by cable systems. The NFL complains about the ability of cable systems, in the absence of the distant signal restrictions, to carry more than a limited number of games. Significantly, however, this case in no way involves importation of a distant station's broadcast of a home game back to the home team's city in violation of "black-out" provisions. The Commission's rules continue to prohibit carriage of a blacked-out game within a 35 mile radius of the city where the game is played.[20]

Pub. L. No. 87-331 exempts from the antitrust laws agreements among sports teams to sell rights to the telecasting of games. The NFL does not contend that the antitrust exemption addresses the issue of cable televi-

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also inconsistent with the Communications Act. In 1976, the same year it enacted the Copyright Act, Congress rejected proposals to amend Section 325 of the Act, 47 U.S.C. § 325 (1976), to impose a retransmission consent requirement applicable to cable systems' retransmission of broadcast signals. Section 325 prohibits broadcast stations from rebroadcasting the signal of another station without its consent. Efforts to extend its reach to cable systems were rejected insofar as the proposal raised issues which Congress deemed would "more appropriately be determined within the framework of copyright legislation rather than within the framework of communications legislation." H.R. Rep. No. 1635, 89th Cong., 2d Sess. 11 (1965).

[20] 47 C.F.R. § 76.67 (1980).

sion carriage of sports programming. Yet the NFL suggests that the Commission was somehow remiss in failing to perceive some congressional policy behind the antitrust exemption in favor of prohibiting excessive importation of competing games into a television market. Neither the Commission nor the Court of Appeals was able to discern any such policy behind Pub. L. No. 87-331, and no such policy is readily apparent. In the absence of such a policy, of course, the NFL's argument loses its essential premise.

Even if the antitrust exemption of Pub. L. No. 87-331 did reflect such a policy, it would demand only that the Commission consider the impact of its rule revisions on that policy. The Commission did so and found "no credible showing" that the general amount of television sports programming would be diminished as a result of the elimination of the distant signal and syndicated exclusivity restraints.[21] The Commission found that television audiences prefer to watch home games over other teams' games by a five-to-one margin and that there is no direct evidence that cable carriage of competing games adversely affects home attendance.[22] These findings are amply supported in the record.[23]

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[21] *1980 Report & Order, supra* note 3, 79 F.C.C.2d at 809-810.

[22] The Commission found that gate attendance is influenced less by the televising of competing games than by external factors such as the weather and the caliber of the home and competing teams. *1980 Report & Order, supra* note 3, 79 F.C.C.2d at 810. The Commission also took note of data showing substantial increases in attendance at professional baseball games, and revenues from television contracts, notwithstanding the emergence of various increased sports offerings on cable systems. *Id.*

[23] Malrite T.V. of New York v. FCC, *supra* note 3, 652 F.2d at 1150, NAB Pet., *supra* note 3, at 32c-33c; *1980 Report & Order, supra* note 3, 79 F.C.C.2d at 809-10.

IV. Conclusion

This case does not warrant the Court's consideration. The Petitioners couch their arguments in terms of alleged conflict between the FCC's relaxation of cable television restrictions and statutory law. In fact, however, there is no predicate for the Petitioners' arguments, because there are no such conflicts. The elimination of distant signal and syndicated exclusivity restraints is entirely consistent with the Copyright Act and the limited antitrust exemption contained in Public Law No. 87-311. The Petitioners' real complaints lie with policy determinations regarding the commercial relationship among program producers, television stations, and cable television systems. These policy determinations are properly made by Congress and the FCC and present no issues for the Court's consideration.

The National Cable Television Association respectfully requests that the Petitions for Certiorari of the National Association of Broadcasters and the National Football League be denied.

Respectfully submitted,

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October 14, 1981

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I HEREBY CERTIFY that on this 14th day of October 1981, a copy of the foregoing Opposition to Petition for a Writ of Certiorari was mailed by first class mail, postage prepaid, to:

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APPENDICES

APPENDIX A

RELEVANT STATUTES

EXCERPTS FROM THE COPYRIGHT ACT OF 1976, Pub. L. No. 94-553, 90 Stat. 2541 (codified at 17 U.S.C. §101 *et seq.* (1976 & Supp. III 1979))

[17 U.S.C. §111(c)(1976 & Supp. III 1979)]

§111(c) Secondary transmissions by cable systems

(1) Subject to the provisions of clauses (2), (3), and (4) of this subsection, secondary transmissions to the public by a cable system of a primary transmission made by a broadcast station licensed by the Federal Communications Commission or by an appropriate governmental authority of Canada or Mexico and embodying a performance or display of a work shall be subject to compulsory licensing upon compliance with the requirements of subsection (d) where the carriage of the signals comprising the secondary transmission is permissible under the rules, regulations, or authorizations of the Federal Communications Commission.

[17 U.S.C. § 301 (1976 & Supp. III 1979)]

§ 301. Preemption with respect to other laws.

(a) On and after January 1, 1978, all legal or equitable rights that are equivalent to any of the exclusive rights within the general scope of copyright as specified by section 106 in works of authorship that are fixed in a tangible medium of expression and come within the subject matter of copyright as specified by sections 102 and 103, whether created before or after that date and whether published or unpublished, are governed exclusively by this title. Thereafter, no person is entitled to any such right or equivalent right in any such work under the common law or statutes of any State.

* * *

(d) Nothing in this title annuls or limits any rights or remedies under any other Federal statute.

[17 U.S.C. § 801(b)(2)(B)(1976 & Supp. III 1979)]

§ 801(b) Subject to the provisions of this chapter, the purposes of the [Copyright Royalty] Tribunal shall be —

* * *

(2) to make determinations concerning the adjustment of the copyright royalty rates in section 111 solely in accordance with the following provisions:

* * *

(B) In the event that the rules and regulations of the Federal Communications Commission are amended at any time after April 15, 1976, to permit the carriage by cable systems of additional television broadcast signals beyond the local service area of the primary transmitters of such signals, the royalty rates established by section 111(d)(2)(B) may be adjusted to insure that the rates for the additional distant signal equivalents resulting from such carriage are reasonable in the light of the changes effected by the amendment to such rules and regulations. In determining the reasonableness of rates proposed following an amendment of Federal Communications Commission rules and regulations, the Copyright Royalty Tribunal shall consider, among other factors, the economic impact on copyright owners and users: *Provided,* That no adjustment in royalty rates shall be made under this subclause with respect to any distant signal equivalent or fraction thereof represented by (i) carriage of any signal permitted under the rules and regulations of the Federal Communications Commission in effect on April 15, 1976, or the carriage of a signal of the same type (that is, independent, network, or noncommercial educational) substituted for such permitted signal, or (ii) a television broadcast signal first carried after April 15, 1976, pursuant to an individual waiver of the rules and regulations of the Federal Communications Commission, as such rules and regulations were in effect on April 15, 1976.

(C) In the event of any change in the rules and regulations of the Federal Communications Commission with respect to syndicated and sports program exclusivity after April 15, 1976, the rates established by section 111(d)(2)(B) may be adjusted to assure that such rates are reasonable in light of the changes to such rules and regulations, but any such adjustment shall apply only to the affected television broadcast signals carried on those systems affected by the change.

(D) The gross receipts limitations established by section 111(d)(2)(C) and (D) shall be adjusted to reflect national monetary inflation or deflation or changes in the average rates charged cable system subscribers for the basic service of providing secondary transmissions to maintain the real constant dollar value of the exemption provided by such section; and the royalty rate specified therein shall not be subject to adjustment.

* * *

EXCERPTS FROM THE COMMUNICATIONS ACT OF 1934, AS AMENDED (codified at 47 U.S.C. §151 et seq. (1976))

[47 U.S.C. §151 (1976)]

§151. Purposes of chapter; Federal Communications Commission created

For the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States a rapid, efficient, Nationwide, and world-wide wire and radio communication service with adequate facilities at reasonable charges, for the purpose of the national defense, for the purpose of promoting safety of life and property through the use of wire and radio communications, and for the purpose of securing a more effective execution of this policy by centralizing authority heretofore granted by law to several

agencies and by granting additional authority with respect to interstate and foreign commerce in wire and radio communication, there is created a commission to be known as the "Federal Communications Commission", which shall be constituted as hereinafter provided, and which shall execute and enforce the provisions of this chapter.

[47 U.S.C. §152(a)(1976]

§152. Application of chapter

(a) The provisions of this chapter shall apply to all interstate and foreign communication by wire or radio and all interstate and foreign transmission of energy by radio, which originates and/or is received within the United States, and to all persons engaged within the United States in such communication or such transmission of energy by radio, and to the licensing and regulating of all radio stations as hereinafter provided; but it shall not apply to persons engaged in wire or radio communication or transmission in the Canal Zone, or to wire or radio communication or transmission wholly within the Canal Zone.

[47 U.S.C. § 325(a)(1976)]

§ 325.(a) False distress signals; rebroadcasting programs

No person within the jurisdiction of the United States shall knowingly utter or transmit, or cause to be uttered or transmitted, any false or fraudulent signal of distress, or communication relating thereto, nor shall any broadcasting station rebroadcast the program or any part thereof of another broadcasting station without the express authority of the originating station.

PUBLIC LAW NO. 87-331, 75 Stat. 732 (codified at 15 U.S.C. §§1291-95 (1976))

[15 U.S.C. §1291(1976)]

§1291. Exemption from antitrust laws of agreements covering telecasting of sports contests and combining of professional football leagues

The antitrust laws, as defined in section 1 of the Act of October 15, 1914, as amended (38 Stat. 730) [15 U.S.C. 12], or in the Federal Trade Commission Act, as amended (38 Stat. 717) [15 U.S.C. 41 et seq.], shall not apply to any joint agreement by or among persons engaging in or conducting the organized professional team sports of football, baseball, basketball, or hockey, by which any league of clubs participating in professional football, baseball, basketball, or hockey contests sells or otherwise transfers all or any part of the rights of such league's member clubs in the sponsored telecasting of the games of football, baseball, basketball, or hockey, as the case may be, engaged in or conducted by such clubs. In addition, such laws shall not apply to a joint agreement by which the member clubs of two or more professional football leagues, which are exempt from income tax under section 501(c)(6) of the Internal Revenue Code of 1954 [26 U.S.C. 501(c)(6)], combine their operations in expanded single league so exempt from income tax, if such agreement increases rather than decreases the number of professional football clubs so operating, and the provisions of which are directly relevant thereto.

* * *

[15 U.S.C. §1292 (1976)]

§1292. Area telecasting restriction limitation

Section 1291 of this title shall not apply to any joint agreement described in the first sentence in such section which prohibits any person to whom such rights are sold or transferred from televising any games within any area, except within the home territory of a member club of the league on a day when such club is playing a game at home.

* * *

[15 U.S.C. §1293 (1976)]

§1293. Intercollegiate and interscholastic football contest limitations

The first sentence of section 1291 of this title shall not apply to any joint agreement described in such section which permits the telecasting of all or a substantial part of any professional football game on any Friday after six o'clock postmeridian or on any Saturday during the period beginning on the second Friday in September and ending on the second Saturday in December in any year from any telecasting station located within seventy-five miles of the game site of any intercollegiate or interscholastic football contest scheduled to be played on such a date if —

(1) such intercollegiate football contest is between institutions of higher learning both of which confer degrees upon students following completion of sufficient credit hours to equal a four-year course, or

(2) in the case of an interscholastic football contest, such contest is between secondary schools, both of which are accredited or certified under the laws of the State or States in which they are situated and offer courses continuing through the twelfth grade of the standard school curriculum, or the equivalent, and

(3) such intercollegiate or interscholastic football contest and such game site were announced through publication in a newspaper of general circulation prior to August 1 of such year as being regularly scheduled for such day and place.

* * *

[15 U.S.C. §1294 (1976)]

§1294. Antitrust laws unaffected as regards to other activities of professional sports contests

Nothing contained in this chapter shall be deemed to change, determine, or otherwise affect the applicability or nonapplicability of the antitrust laws to any act, contract, agreement, rule, course of conduct, or other activity by, be-

tween, or among persons engaging in, conducting, or participating in the organized professional team sports of football, baseball, basketball, or hockey, except the agreements to which section 1291 of this title shall apply.

* * *

[15 U.S.C. §1295 (1976)]

§1295. "Persons" defined

As used in this chapter, "persons" means any individual, partnership, corporation, or unincorporated association or any combination or association thereof.

APPENDIX B

RELEVANT REGULATIONS OF THE FEDERAL COMMUNICATIONS COMMISSION

[47 C.F.R. § 76.67 (1980)]

§ 76.67 Sports broadcasts.

(a) No community unit located in whole or in part within the specified zone of a television broadcast station licensed to a community in which a sports event is taking place, shall, on request of the holder of the broadcast rights to that event, or its agent, carry the live television broadcast of that event if the event is not available live on a television broadcast signal carried by the community unit pursuant to the mandatory signal carriage rules of this part. For the purposes of this section, if there is no television station licensed to the community in which the sports event is taking place, the applicable specified zone shall be that of the television station licensed to the community with which the sports event or local team is identified, or, if the event or local team is not identified with any particular community, the nearest community to which a television station is licensed.

(b) Notification of the programming to be deleted pursuant to this section shall include the following information:

(1) As to programming to be deleted from television broadcast signals regularly carried by the community unit:

(i) The name and address of the party requesting the program deletion;

(ii) The date, time and expected duration of the sports event the television broadcast of which is to be deleted;

(iii) The call letters of the television broadcast station(s) from which the deletion is to be made.

(2) As to programming to be deleted from television broadcast signals not regularly carried by the community unit:

(i) The name and address of the party requesting the program deletion;

(ii) The date, time and expected duration of the sports event the television broadcast of which is to be deleted.

(c) Notifications given pursuant to this section must be received, as to regularly scheduled events, no later than the Monday preceding the calendar week (Sunday-Saturday) during which the program deletion is to be made. Notifications as to events not regularly scheduled and revisions of notices previously submitted, must be received within twenty-four (24) hours after the time of the telecast to be deleted is known, but in any event no later than twenty-four (24) hours from the time the subject telecast is to take place.

(d) Whenever, pursuant to this section, a community unit is required to delete a television program on a signal regularly carried by the community unit, such community unit may, consistent with the rules contained in Subpart F of this part, substitute a program from any other television broadcast station. A program substituted may be carried to its completion, and the community unit need not return to its regularly carried signal until it can do so without interrupting a program already in progress.

(e) The provisions of this section shall not be deemed to require the deletion of any portion of a television signal which a community unit was lawfully carrying prior to March 31, 1972.

(f) The provisions of this section shall not apply to any community unit having fewer than 1,000 subscribers.